

PT 02-66

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

FULLER PARK
DEVELOPMENT CORPORATION
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 00-PT-0079
(99-16-1477)
P.I.N: 20-04-406-014, *et al.*
(See Appendix I)

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Michael S. Gershowitz and Ms. Maria Scherer of Piper, Marbury, Rudnick & Wolfe on behalf of the Fuller Park Development Corporation (the “applicant”).

SYNOPSIS: This proceeding raises the following issues: first, whether applicant owned real estate identified by the Cook County Parcel Index Numbers shown on the attached Appendix I (hereinafter collectively referred to as the "subject property") during any part of the 1999 assessment year; second, whether applicant qualifies as an “institution of public charity” within the meaning of Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1 *et seq.* (the “Code”); and third, whether any part of the subject property was "exclusively used for charitable or beneficent purposes ...," as required by Section 15-65(a), during any part of the 1999 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review ("Board") on April 3, 2000. The Board reviewed the Complaint and recommended to the Illinois Department of Revenue (the "Department") that the subject property be exempt as of January 6, 1999. The Department, however, denied the exemption by means of a determination, dated October 19, 2000, which found that the subject property is not in exempt ownership and not in exempt use. Applicant filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's determination be modified to reflect that 91% of the subject property be exempt from real estate taxation for 98% of the 1999 assessment year.

FINDINGS OF FACT:

A. Preliminary Considerations

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Group Ex. No. 1.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Group Ex. No. 1, Doc. C.
3. The subject property is identified by the Parcel Index Numbers shown on Appendix I and consists of nine contiguous lots that form a 69,000 square foot tract situated in Chicago's Fuller Park community. Tr. pp. 39, 73.
4. The Fuller Park community extends from 39th Street on the north to 55th Street on the south to the Dan Ryan Expressway on the east and Stewart Avenue on the west. Tr. pp. 39-40.

5. The Fuller Park Community has gone largely undeveloped since 1964, with nearly 30% of the community consisting of blighted, vacant lots. Tr. pp. 14-17.
6. The subject property had dumping and other debris strewn across it, and was otherwise in very poor condition, when applicant acquired ownership of it via a trustee's deed dated January 9, 1999. Dept. Group Ex. No. 1; Doc. B; Applicant Ex. No. 1; Tr. pp. 39-41.

B. Applicant's Organizational And Financial Structure

7. Applicant is an Illinois Not For Profit Corporation organized for purposes of: (a) creating, providing and managing affordable housing for low and moderate income families; (b) promoting community empowerment and neighborhood development without displacement; and, (c) creating and providing job skills training for the unemployed. Applicant Ex. Nos. 2, 3.
8. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service in September of 1995. Applicant Ex. No. 4.
9. Applicant's federal return for the 1999 calendar year indicates the following information about its financial structure:

SOURCE	TOTAL	% OF TOTAL
REVENUES		
Program Service Revenues	\$ 114,611.00	100%
TOTAL REVENUES	\$ 114,611.00	

EXPENSES		
Compensation of Officers, Etc.	\$ 42,080.00	54% ¹
Other Salaries & Wages	\$ 411.00	1%
Payroll Taxes	\$ 11,911.00	15%
Accounting Fees	\$ 1,000.00	1%
Supplies	\$ 3,071.00	4%
Telephone	\$ 998.00	1%
SOURCE (Cont'd.)	TOTAL	% OF TOTAL
EXPENSES		
Postage & Shipping	\$ 89.00	<1%
Equipment Rental & Maintenance	\$ 371.00	<1%
Travel	\$ 402.00	1%
Conferences, Conventions & Meetings	\$ 4,378.00	6%
Depreciation	\$ 1,290.00	2%
Stipends for Uniforms, Transportation and Tools Paid to Workers In Job Training Program	\$ 9,773.00	13%
Miscellaneous	\$ 279.00	<1%
Insurance	\$ 475.00	1%
Dues & Subscriptions	\$ 5.00	<1%
Bank Charges	\$ 1,520.00	2%

1. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total expenses shown on the relevant line of the third column. Thus, \$42,080.00/ \$78,053.00=.5391(rounded four places past the decimal) or 54%.

TOTAL EXPENSES	\$ 78,053.00	
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Applicant Ex. No. 5; Tr. p. 38.

10. Applicant receives all of its program service revenues from the City of Chicago (the “City”), which provides full funding for applicant’s job training program as well as two of its housing assistance programs. Tr. pp. 21-24, 31-32.

11. One of these housing assistance programs allows applicant to function as an official housing resource center that responds to utility shutoffs and other housing emergencies for the City; the other enables applicant to provide housing modification services to senior citizens or the disabled. Tr. pp. 21-24, 32.

C. Applicant’s Programming

12. During 1999,² applicant conducted all of its programming from office space that it leased from the Chicago Park District (the “District”). The exempt status of this space, situated in the Fuller Park Field House, is not at issue in this case. Tr. pp. 27, 75.

13. The District did not permit applicant to conduct any revenue-generating activities in the space that it leased. However, applicant did provide free resources that assisted Fuller Park residents with tax sales, mortgage foreclosures, repairing property damage, community development and other housing-related issues. Tr. pp. 16-20, 23, 75.

2. All of the programs described in this Section, and uses of the subject property described in the next, shall be understood to be programs or uses occurring during 1999 unless context clearly specifies otherwise.

14. Applicant also organized various free community meetings that promoted awareness of governmental and private sector programs which could assist area residents with housing issues and provided free training in housing-related issues to neighborhood block clubs. Tr. pp. 19-20, 22-23, 38.
15. These training sessions enabled some block clubs in the Fuller Park community to apply for and actually receive City funds for making block improvements. Tr. p. 23.
16. Applicant's job training program taught carpentry, plumbing, painting and other vocational job skills to the hard-core unemployed, many of whom were recently released from correctional institutions or substance abuse treatment facilities. Tr. pp. 26, 28-30, 38.
17. Approximately 60 to 70 persons received job training through this program. Tr. pp. 26, 38.
18. Applicant also provided a community library, a food pantry, GED and literacy classes and a computer lab to Fuller Park residents. Tr. pp. 25-27.
19. Applicant advised community residents of its services and programs via word of mouth and flyers that it distributed throughout the community. Tr. p. 20.

D. Ownership and Use of the Subject property

20. Applicant obtained ownership of the subject property via a trustee's deed dated January 9, 1999. Applicant Ex. No. 1.
21. Applicant purchased the subject property with the intention of converting it into a community nature center. Tr. pp. 48-49, 51-53.

22. The subject property was in very poor condition, and had dumping and other debris strewn across it, when applicant obtained ownership of it. Tr. pp. 39-41.
23. Applicant held numerous volunteer community cleanups at the subject property prior to actually obtaining its ownership interest. It continued holding these cleanups on a regular basis throughout 1999. Applicant Ex. No. 7; Tr. pp. 43-50.
24. Applicant's clean up efforts included, *inter alia*, bulldozing down overgrown trees and removing concrete that had been dumped onto the property. Applicant Ex. No. 7; Tr. pp. 45-48.
25. Applicant also began to plant the first part of its planned nature center, a prairie garden, during 1999. It purchased \$1,000.00 worth of dirt, and received \$2,500.00 worth of donated wild flower seeds, that were used to plant the prairie garden. Tr. p. 51.
26. Applicant also constructed a savanna area as part of the nature center during 1999. Tr. p. 59.
27. Applicant formally dedicated the nature center on June 12, 1999. Applicant Ex. No. 8; Tr. p. 55.
28. Applicant held ecology-related workshops and other instructional activities for area youth on the subject property after it opened the nature center. All of these activities were free of charge. Tr. pp. 63-65.
29. Applicant planned to construct a 6,500 square foot improvement, which was to serve as its new headquarters, on part of the subject property. Applicant

developed some site plans for this improvement, and pre-graded the area where it was to be constructed, during 1999. It did not, however, actually begin construction on its planned headquarters during 1999 due to lack of financing. Applicant Ex. Nos. 9, 10; Tr. pp. 56, 58, 59, 62.

CONCLUSIONS OF LAW:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, wherein all property owned by “institutions of public charity” is exempted from real estate taxation, provided that such property is “actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit.” 35 **ILCS** 200/15-65(a).

The statutory requirements for exemption under Section 15-65(a) are that: (1) the property must be owned by an entity that qualifies as an “institution of public charity;” and, (2) the property must actually and exclusively be used for charitable purposes.” *Id*; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968). Both of these requirements are presently at issue, as the instant denial was predicated on lack of exempt ownership and lack of exempt use.

B. Exempt Ownership

1. Pro-ration Issue

The first issue with respect to exempt ownership is whether applicant owned the subject property during any part of the 1999 assessment year. The trustee's deed admitted as Applicant Ex. No. 1 proves that applicant obtained ownership of the subject property on January 9, 1999. Consequently, the pro-ratio provisions contained in Section 9-185 of the Property Tax Code apply herein.

Section 9-185 states in pertinent part that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-185.

Applicant obtained its "right of possession" to the subject property on January 9, 1999 (Applicant Ex. No. 1). Therefore, Section 9-185 mandates that any exemptions granted herein be limited to the 98% of the 1999 assessment year which transpired on or after that date.

2. Whether Applicant Qualifies as an "Institution of Public Charity"

The next, and most critical, exempt ownership issue concerns whether applicant qualifies as an "institution of public charity" within the meaning of Section 15-65(a) of the Property Tax Code. By definition, an "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes

expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see* Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)); or, (2) operates primarily in the public interest and lessens the State's burden. (*see* DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*); Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

Promoting re-development of, and supporting fair housing practices in, a previously dilapidated community certainly serves the public interest, as does providing job training to the hard-core unemployed. *See* e.g. 305 **ILCS** 10/1 *et seq.* (Food and Housing Assistance Act); 310 **ILCS** 5/1 *et seq.* (State Housing Act); 310 **ILCS** 50/1 *et seq.* (Abandoned Housing Rehabilitation Act); 820 **ILCS** 405/100 *et seq.* (Unemployment Insurance Act). Furthermore, public policy favors reducing tax burdens or other economic hardships imposed on organizations, such as applicant, that strive to improve the quality of life for their community members. Lena Community Trust Fund

v. Department of Revenue, 322 Ill. App.3d 884 (2nd Dist. 2001). However, applicant must still comply with the definitional criteria articulated in Crerar v. Williams, *supra*, and Methodist Old People's Home v. Korzen, *supra*, in order to receive such relief.

Applicant's legal status as an Illinois not-for-profit corporation ensures that its corporate structure is consistent with that of an "institution of public charity" in that it has no capital stock, shareholders or other indicia of a commercial enterprise. *See* 805 ILCS 105/106.05. However, applicant's funds, specifically its program service revenues, come entirely from one governmental source, the City of Chicago, rather than "public and private charity." Korzen, *supra*.

An entity's funding source is not the sole determinative factor of its exempt status, so long as the entity applies whatever funds it receives to public purposes. American College of Surgeons v. Korzen, 36 Ill.2d 336, 340 (1967). Applicant's job training program is totally funded by the City of Chicago but serves public purposes in two respects. First, it addresses issues raised in the following Declaration of Public Policy, which appears in Section 405/100 of the Unemployment Insurance Act, 820 ILCS 405/100 *et seq.*:

Economic insecurity due to involuntary unemployment has become a serious menace to the health, safety, morals and welfare of the people of the State of Illinois. Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. ... It is the considered judgment of the General Assembly that in order to lessen the menace to the health, safety and morals of the people of Illinois, and to encourage stabilization of employment, compulsory unemployment insurance upon a statewide scale providing for the setting aside of reserves during

period of employment to be used to pay benefits during periods of unemployment, is necessary.

820 ILCS 405/100.

Second, applicant's job training programs serves two populations, the hard core unemployed and those recently released from correctional institutions or substance abuse facilities, that would very likely require some form of direct or indirect governmental assistance in order to become productive citizens. By teaching job-related skills to these populations, applicant's job training program reduces governmental burdens in terms of: (a) administrative costs, personnel and other resources necessary to operate governmental programs that directly assist these individuals; and/or, (b) unemployment benefits or other forms of indirect public assistance that the government would have to pay to these individuals if they were unable to obtain marketable job skills. Therefore, pursuant to American College of Surgeons v. Korzen, *supra*, I conclude that applicant should not be denied exempt status merely because all of the funding for its job training program comes from a governmental source.

The same holds true for applicant's other programs that are funded by the City. These programs do not focus on job training. They do, however, provide Fuller Park residents with services that relieve governmental burdens in terms of reducing community blight, ameliorating unsafe housing conditions and minimizing the harmful effects of utility outages and other housing-related emergencies. Therefore, the fact that applicant obtains all of its funding for these programs from one governmental source, the City of Chicago, is insufficient to disqualify it from exempt status. American College of Surgeons v. Korzen, *supra*.

With respect to other factors that might disqualify applicant from exempt status, it is first noted that applicant's organizational documents contain absolutely no reference to memberships or membership requirements. Nor do its financial statements indicate that applicant: (a) receives any support whatsoever from membership dues; or, (b) makes any expenditures on membership-related activities. As such, it cannot be said that applicant is the type of organization that fails to qualify for exempt status because it operates primarily for the benefit of non-exempt interests, such as those of its dues paying membership. Rogers Park Post No. 108 v. Brenza, *supra*; Morton Temple Association v. Department of Revenue, *supra*. Rather, the above analysis demonstrates that applicant is the type of organization that serves the public interest by providing services that relieve governmental burdens. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*; Lena Community Trust Fund v. Department of Revenue, *supra*. Therefore, that portion of the Department's determination which found that the subject property is not owned by a duly qualified "institution of public charity" should be modified to reflect that said property was in exempt ownership as of January 9, 1999.

C. Exempt Use

This case raises somewhat unusual exempt use issues because the activities for which applicant was awarded exempt status, job training and housing assistance, did not take place at the subject property throughout the period in question. Furthermore, the office leasehold wherein applicant actually conducted its job training and housing assistance programs is not at issue herein. Consequently, unlike more traditional cases of this genre, one can not determine if the subject property is in exempt use simply by

inquiring whether or to what extent applicant actually dispensed “charitable” services at this property. Rather, the inquiry must focus on whether the uses or uses to which applicant actually put the subject property qualify as “exclusively charitable” within the meaning of Section 15-65. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

The word “exclusively,” as used in Section 15-65 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). “Charitable” uses may be applied to almost anything that tends to promote the well doing and well being of social man, provided that the use or uses in question do not violate law or public policy. People ex rel Redfern v Hopewell Farms, 9 Ill. App.3d 16 (5th Dist., 1972). See also discussion of Crerar v. Williams, 145 Ill. 625 (1893) and Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968), *supra*, at pp. 9-10. However, where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is proper to exempt those parts that are in actual, exempt use and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971).

This particular subject property consists of nine contiguous lots that form a 69,000 square foot tract. Applicant was first actively developing, and then actually using, most portions of this entire tract as a nature preserve throughout the period in question. It also reserved approximately 6,500 square feet, or 9%,³ of the tract for future construction

3. 6500 sq. ft./69,000.00 sq. ft/ = .0942 (rounded) or 9%.

of an improvement that was intended to serve as its headquarters. However, applicant did not have sufficient funding to preserve the economic viability of its headquarters project during the period under review.

Business realities inherent in modern construction practice dictate that applicant would have had to procure an appropriate level of financing in order to proceed beyond mere initial preparations for this project. Because applicant did not obtain such financing, the 9% of the subject property wherein applicant planned to construct its headquarters was not in exempt use throughout the period under review. Therefore, that portion of the Department's determination which found that this 9% is not in exempt use should be affirmed.

That portion of the Department's determination which found that the remaining 91% of the subject property is not in exempt use should, however, be reversed. In People ex. rel. Hellyer v. Morton, 373 Ill 72 (1940), the court upheld the exemption of real estate used for a public arboretum. This arboretum, like applicant's nature center, was open to the public, did not charge admission and provided visitors with free lectures and demonstrations on subjects such as horticulture and illustrated landscaping. *Id.* at 75-76. If property used for such purposes qualified for exemption because it constituted a "a distinct contribution to the public welfare" (*id.* at 78), then it stands to reason that those portions of a formerly dilapidated dumping site which applicant actively transformed into a community nature center should, pursuant to Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987),⁴ likewise be exempt. Therefore, the Department's determination in this matter should be modified to reflect that this 91% of

the subject property should be exempt from real estate taxes for 98% of the 1999 assessment year.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that:

- A. 91% of real estate identified by Cook County Parcel Index Numbers 20-04-406-014, 20-04-406-015, 20-04-406-016, 20-04-406-017, 20-04-406-018, 20-04-406-019, 20-04-406-020, 20-04-406-021 and 20-04-406-022 be exempt from real estate taxes for 98% of the 1999 assessment year under Sections 9-185 and 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*; but, The remaining 9% of the real estate identified by these Cook County Parcel Index Numbers remain on the tax rolls and be taxable to applicant throughout that 98% of the 1999 assessment year which transpired on or after January 9, 1999.

7/11/02

Date

Alan I. Marcus
Administrative Law Judge

4. In Weslin Properties, *supra*, the court held that the active adaptation and development of real estate for a specifically identifiable “charitable” use constitutes exempt use. 157 Ill. App. 3d at 585-586.

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APPENDIX I - LIST OF PARCEL INDEX NUMBERS

20-04-406-014
20-04-406-015
20-04-406-016
20-04-406-017
20-04-406-018
20-04-406-019
20-04-406-020
20-04-406-021
20-04-406-022